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HOUSE BILL 287

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gail Chasey

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; AMENDING THE CIGARETTE ENFORCEMENT ACT;
AMENDING THE TOBACCO ESCROW FUND ACT; REQUIRING ADDITIONAL
DOCUMENTATION PRIOR TO DELIVERY SALES OF CIGARETTES; REQUIRING
CERTAIN TOBACCO PRODUCTS MANUFACTURERS AND IMPORTERS TO POST
BONDS; GRANTING ADDITIONAL POWERS TO THE ATTORNEY GENERAL;
IMPOSING JOINT AND SEVERAL LIABILITY ON CERTAIN TOBACCO
PRODUCTS MANUFACTURERS AND IMPORTERS; IMPOSING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-4-12 NMSA 1978 (being Laws 1999,
Chapter 208, Section 1) is amended to read:

"6-4-12. DEFINITIONS.--As used in ~~[this act]~~ Sections
6-4-12 and 6-4-13 NMSA 1978:

A. "adjusted for inflation" means increased in
accordance with the formula for inflation adjustment set forth
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1 in Exhibit C to the master settlement agreement;

2 B. "affiliate" means a person who directly or
3 indirectly owns or controls, is owned or controlled by, or is
4 under common ownership or control with, another person. Solely
5 for purposes of this definition, the terms "owns", "is owned"
6 and "ownership" mean ownership of an equity interest, or the
7 equivalent thereof, of ten percent or more, and the term
8 "person" means an individual, partnership, committee,
9 association, corporation or any other organization or group of
10 persons;

11 C. "allocable share" means Allocable Share as that
12 term is defined in the master settlement agreement;

13 D. "cigarette" means any product that contains
14 nicotine, is intended to be burned or heated under ordinary
15 conditions of use, and consists of or contains:

16 (1) any roll of tobacco wrapped in paper or in
17 any substance not containing tobacco; or

18 (2) tobacco, in any form, that is functional
19 in the product, which, because of its appearance, the type of
20 tobacco used in the filler, or its packaging and labeling, is
21 likely to be offered to, or purchased by, consumers as a
22 cigarette; or

23 (3) any roll of tobacco wrapped in any
24 substance containing tobacco which, because of its appearance,
25 the type of tobacco used in the filler, or its packaging and

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1 labeling, is likely to be offered to, or purchased by,
2 consumers as a cigarette described in [~~clause (1) of this~~
3 ~~definition~~] Paragraph (1) of this subsection. The term
4 "cigarette" includes "roll-your-own" (i.e., any tobacco which,
5 because of its appearance, type, packaging, or labeling is
6 suitable for use and likely to be offered to, or purchased by,
7 consumers as tobacco for making cigarettes). For purposes of
8 this definition of "cigarette", 0.09 ounces of "roll-your-own"
9 tobacco shall constitute one individual "cigarette";

10 E. "master settlement agreement" means the
11 settlement agreement (and related documents) entered into on
12 November 23, 1998 by the state and leading United States
13 tobacco product manufacturers;

14 F. "qualified escrow fund" means an escrow
15 arrangement with a federally or state chartered financial
16 institution having no affiliation with any tobacco product
17 manufacturer and having assets of at least one billion dollars
18 (\$1,000,000,000) where such arrangement requires that such
19 financial institution hold the escrowed funds' principal for
20 the benefit of releasing parties and prohibits the tobacco
21 product manufacturer placing the funds into escrow from using,
22 accessing or directing the use of the funds' principal except
23 as consistent with Subsection B of Section [~~2 of this act~~]
24 6-4-13 NMSA 1978;

25 G. "released claims" means Released Claims as that
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1 term is defined in the master settlement agreement;

2 H. "releasing parties" means Releasing Parties as
3 that term is defined in the master settlement agreement;

4 I. "tobacco product manufacturer" means an entity
5 that after the date of enactment of this act directly (and not
6 exclusively through any affiliate):

7 (1) manufactures cigarettes anywhere that such
8 manufacturer intends to be sold in the United States, including
9 cigarettes intended to be sold in the United States through an
10 importer (except where such importer is an original
11 participating manufacturer (as that term is defined in the
12 master settlement agreement) that will be responsible for the
13 payments under the master settlement agreement with respect to
14 such cigarettes as a result of the provisions of subsection
15 II(mm) of the master settlement agreement and that pays the
16 taxes specified in subsection II(z) of the master settlement
17 agreement, and provided that the manufacturer of such
18 cigarettes does not market or advertise such cigarettes in the
19 United States);

20 (2) is the first purchaser anywhere for resale
21 in the United States of cigarettes manufactured anywhere that
22 the manufacturer does not intend to be sold in the United
23 States; or

24 (3) becomes a successor of an entity described
25 in Paragraph (1) or (2) of this subsection.

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1 The term "tobacco product manufacturer" shall not include
2 an affiliate of a tobacco product manufacturer unless such
3 affiliate itself falls within Paragraph (1), (2) or (3) of this
4 subsection; and

5 J. "units sold" means the number of individual
6 cigarettes sold in the state by the applicable tobacco product
7 manufacturer (whether directly or through a distributor,
8 retailer or similar intermediary or intermediaries) during the
9 year in question, as measured by excise taxes collected [~~by the~~
10 ~~state on packs (or "roll-your-own" tobacco containers) bearing~~
11 ~~the excise tax stamp of the state~~], ounces of "roll-your-own"
12 tobacco sold and sales of products bearing tax-exempt stamps on
13 packs or "roll-your-own" tobacco containers. The secretary of
14 taxation and revenue shall promulgate such [~~regulations~~] rules
15 as are necessary to ascertain the amount of state excise tax
16 paid on the cigarettes of such tobacco product manufacturer for
17 each year."

18 Section 2. Section 6-4-14 NMSA 1978 (being Laws 2003,
19 Chapter 114, Section 1) is amended to read:

20 "6-4-14. SHORT TITLE.--~~[This act]~~ Sections 6-4-14 through
21 6-4-24 NMSA 1978 may be cited as the "Tobacco Escrow Fund
22 Act"."

23 Section 3. Section 6-4-17 NMSA 1978 (being Laws 2003,
24 Chapter 114, Section 4) is amended to read:

25 "6-4-17. CERTIFICATION BY TOBACCO PRODUCT MANUFACTURER.--
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1 A. No later than April 30 of each year, a tobacco
2 product manufacturer whose cigarettes are sold in this state,
3 whether directly or through a distributor, retailer or similar
4 intermediary, shall execute and deliver to the attorney
5 general, in the manner and on the form prescribed by the
6 attorney general requesting such information as the attorney
7 general deems reasonably necessary to make the determination
8 required by Section 6-4-18 NMSA 1978, a certification pursuant
9 to this section. The certification shall:

10 (1) be made under penalty of perjury;

11 (2) state that as of the date of the
12 certification, the tobacco product manufacturer is either a
13 participating or a nonparticipating manufacturer; and

14 (3) include the information required pursuant
15 to [~~Subsections~~] Subsection B or C of this section.

16 B. In its certification, a participating
17 manufacturer shall include a complete list of its brand
18 families.

19 C. In its certification, a nonparticipating
20 manufacturer shall:

21 (1) certify that it is registered to do
22 business in the state or has appointed an agent for service of
23 process and has provided written notice to the attorney general
24 in accordance with Section [~~7 of the Tobacco Escrow Fund Act~~]
25 6-4-20 NMSA 1978;

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1 (2) certify that it is in full compliance with
2 Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act and any
3 rules promulgated pursuant to that act, including all annual
4 payments as may be required by the attorney general;

5 (3) certify that it has established and
6 maintains a qualified escrow fund governed by a qualified
7 escrow agreement that has been reviewed and approved by the
8 attorney general and provide:

9 (a) the name, address and telephone
10 number of the financial institution where the fund is
11 established;

12 (b) the account number of the fund and
13 the subaccount number for the state;

14 (c) the amounts placed in the fund for
15 cigarettes sold in the state during the preceding calendar
16 year, including the date and amount of each deposit and any
17 other evidence or verification of the amounts as the attorney
18 general deems necessary; and

19 (d) the amount and date of each
20 withdrawal or transfer of funds made at any time from the fund
21 or from any other qualified escrow fund into which the
22 nonparticipating manufacturer has made escrow payments pursuant
23 to Section 6-4-13 NMSA 1978; and

24 (4) include a complete list of its brand
25 families and:

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1 (a) separately list the number of units
2 sold in the state for each brand family during the preceding
3 calendar year, indicating any brand family sold in the state
4 during the preceding calendar year that is no longer being sold
5 as of the date of certification; and

6 (b) indicate all of its brand families
7 that have been sold in the state at any time during the current
8 calendar year, identifying by name and address any other
9 manufacturer of [~~such~~] the brand families in the preceding or
10 current calendar year.

11 D. In its certification, a nonparticipating
12 manufacturer located outside of the United States shall also:

13 (1) certify that it has provided a
14 declaration, on a form prescribed by the attorney general, from
15 each of its importers into the United States of any of its
16 brand families to be sold in New Mexico that the importer
17 accepts joint and several liability with the nonparticipating
18 manufacturer for all escrow deposits due in accordance with
19 Section 6-4-13 NMSA 1978, for all penalties assessed in
20 accordance with Section 6-4-13 NMSA 1978 and for payment of all
21 costs and attorney fees imposed in accordance with the Tobacco
22 Escrow Fund Act or Section 6-4-13 NMSA 1978; and

23 (2) certify that it has appointed a resident
24 agent for service of process in New Mexico in accordance with
25 Section 6-4-20 NMSA 1978.

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1 ~~[D.]~~ E. A tobacco product manufacturer may not
2 include a brand family in its certification unless:

3 (1) in the case of a participating
4 manufacturer, the participating manufacturer affirms that the
5 brand family is to be deemed its cigarettes for purposes of
6 calculating its payments under the master settlement agreement
7 for the relevant year in the volume and shares determined
8 pursuant to the master settlement agreement; or

9 (2) in the case of a nonparticipating
10 manufacturer, the nonparticipating manufacturer affirms that
11 the brand family is to be deemed its cigarettes for purposes of
12 Section 6-4-13 NMSA 1978.

13 ~~[E.]~~ F. A tobacco product manufacturer shall update
14 the list of its brand families thirty days prior to any
15 addition to or modification of its brand families by executing
16 and delivering a supplemental certification to the attorney
17 general.

18 ~~[F.]~~ G. A tobacco product manufacturer shall
19 maintain all invoices and documentation of sales and other
20 information relied upon for its certification to the attorney
21 general for a period of five years, unless otherwise required
22 by law to maintain them for a greater period of time.

23 ~~[G.]~~ H. Nothing in this section shall limit or
24 otherwise affect the state's right to maintain that a brand
25 family constitutes cigarettes of a different tobacco product

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1 manufacturer for purposes of calculating payments under the
2 master settlement agreement or for purposes of Section 6-4-13
3 NMSA 1978."

4 Section 4. Section 6-4-18 NMSA 1978 (being Laws 2003,
5 Chapter 114, Section 5) is amended to read:

6 "6-4-18. DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND
7 CIGARETTE BRANDS.--

8 A. The attorney general shall develop, maintain and
9 publish on its web site a directory listing all tobacco product
10 manufacturers that have provided current, accurate and complete
11 certifications as required by the Tobacco Escrow Fund Act and
12 all brand families that are listed in those certifications.

13 The attorney general shall not include or retain in the
14 directory a [~~nonparticipating manufacturer~~] name or brand
15 family if:

16 (1) the participating manufacturer fails to
17 provide the required certification or to make a payment
18 calculated by an independent auditor to be due from it under
19 the master settlement agreement except to the extent that it is
20 disputing such payment;

21 [~~(1)~~] (2) the nonparticipating manufacturer
22 fails to provide the required certification or the attorney
23 general determines that its certification is not in compliance
24 with Section [~~4 of the Tobacco Escrow Fund Act~~] 6-4-17 NMSA
25 1978; or

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1 [~~2~~] (3) the attorney general concludes that:

2 (a) all escrow payments required by
3 Section 6-4-13 NMSA 1978 for any period for any brand family,
4 whether or not listed by the nonparticipating manufacturer,
5 have not been fully paid into a qualified escrow fund governed
6 by a qualified escrow agreement that has been approved by the
7 attorney general; [~~or~~]

8 (b) [~~all~~] any outstanding final
9 judgments, including interest thereon, for violations of
10 Section 6-4-13 NMSA 1978 have not been fully satisfied for the
11 brand family or the nonparticipating manufacturer;

12 (c) for a nonparticipating manufacturer
13 or a tobacco product manufacturer that became a participating
14 manufacturer after the master settlement agreement in New
15 Mexico or in any other state, or any of its principals, the
16 nonparticipating manufacturer or tobacco product manufacturer
17 fails to provide reasonable assurance that it will comply with
18 the requirements of the Tobacco Escrow Fund Act; or

19 (d) the manufacturer has knowingly
20 failed to disclose any material information required or
21 knowingly made any material false statement in the
22 certification of any supporting information or documentation
23 provided.

24 B. As used in this section, "reasonable assurances"
25 means information and documentation establishing to the

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1 satisfaction of the attorney general that a failure to pay in
2 New Mexico or elsewhere was the result of a good faith dispute
3 over the payment obligation.

4 [B-] C. The attorney general shall update the
5 directory as necessary by adding or removing a tobacco product
6 manufacturer or a brand family to keep the directory in
7 conformity with the requirements of the Tobacco Escrow Fund
8 Act.

9 [G-] D. A distributor shall provide a current
10 electronic mail address to the attorney general for the purpose
11 of receiving notifications as may be required pursuant to the
12 Tobacco Escrow Fund Act."

13 Section 5. A new section of the Tobacco Escrow Fund Act,
14 Section 6-4-18.1 NMSA 1978, is enacted to read:

15 "6-4-18.1. [NEW MATERIAL] BOND REQUIREMENTS FOR NEWLY
16 QUALIFIED AND ELEVATED RISK NONPARTICIPATING MANUFACTURERS.--

17 A. The attorney general may require a
18 nonparticipating manufacturer to post a bond for the first
19 three years of the manufacturer's listing in the directory or
20 for a longer period if the manufacturer has been determined to
21 pose an elevated risk for noncompliance with the Tobacco Escrow
22 Fund Act. The attorney general may consult with other states
23 to determine the viability of a potential nonparticipating
24 manufacturer and may impose additional requirements to protect
25 state interests.

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1 B. Notwithstanding any other provision of law, if a
2 nonparticipating manufacturer is to be listed in the directory,
3 and if the attorney general reasonably determines that a
4 nonparticipating manufacturer who has filed a certification
5 pursuant to Section 6-4-17 NMSA 1978 poses an elevated risk for
6 noncompliance with the Tobacco Escrow Fund Act, the
7 nonparticipating manufacturer and any of its brand families
8 shall not be included in the directory until the
9 nonparticipating manufacturer, or its United States importer
10 that undertakes joint and several liability for the
11 manufacturer's performance in accordance with Section 6-4-20
12 NMSA 1978, has posted bond in accordance with this section.

13 C. The bond shall be posted by a corporate surety
14 located within the United States in an amount equal to the
15 greater of fifty thousand dollars (\$50,000) or the amount of
16 escrow the manufacturer, in either its current or predecessor
17 form, was required to deposit as a result of its previous
18 calendar year sales in New Mexico. The bond shall be written
19 in favor of the state of New Mexico and shall be conditioned on
20 the performance by the nonparticipating manufacturer or its
21 United States importer that undertakes joint and several
22 liability for the manufacturer's performance in accordance with
23 all of its obligations under the Tobacco Escrow Fund Act or
24 Section 6-4-13 NMSA 1978 during the year in which the
25 certification is filed and the next succeeding calendar year.

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1 D. A nonparticipating manufacturer may be deemed to
2 pose an elevated risk for noncompliance with this section or
3 Section 6-4-13 NMSA 1978 if:

4 (1) the nonparticipating manufacturer or any
5 of its affiliates has underpaid an escrow obligation within the
6 past three calendar years, unless:

7 (a) the manufacturer did not make
8 underpayment knowingly or recklessly and the manufacturer
9 promptly cured the underpayment within one hundred eighty days
10 of notice; or

11 (b) the underpayment or lack of payment
12 is the subject of a good faith dispute as documented to the
13 satisfaction of the attorney general and the underpayment is
14 cured within one hundred eighty days of entry of a final order
15 establishing the amount of the required escrow payment;

16 (2) any state has removed the manufacturer or
17 its brands or brand families or an affiliate or any of the
18 affiliate's brands or brand families from the state's tobacco
19 directory for noncompliance with the state law at any time
20 within the past three calendar years; or

21 (3) any state has litigation pending against,
22 or an unsatisfied judgment against, the manufacturer or any of
23 its affiliates for escrow or for penalties, costs or attorney
24 fees related to noncompliance with the state escrow laws.

25 E. As used in this section, "newly qualified

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1 nonparticipating manufacturer" means a nonparticipating
2 manufacturer that has not previously been listed in the
3 directory."

4 Section 6. Section 6-4-20 NMSA 1978 (being Laws 2003,
5 Chapter 114, Section 7) is amended to read:

6 "6-4-20. AGENT FOR SERVICE OF PROCESS.--

7 A. A nonparticipating manufacturer not registered
8 to do business in the state shall, as a condition precedent to
9 having its name or its brand families listed and retained in
10 the directory, appoint and continually engage without
11 interruption a registered agent in this state for service of
12 process on whom all process and any action or proceeding
13 arising out of the enforcement of the Tobacco Escrow Fund Act
14 or Section 6-4-13 NMSA 1978 may be served. The
15 nonparticipating manufacturer shall provide to the attorney
16 general the name, address and telephone number of its agent for
17 service of process and shall provide any other information
18 relating to its agent as may be requested by the attorney
19 general.

20 B. A nonparticipating manufacturer located outside
21 of the United States shall, as an additional condition
22 precedent to having its brand families listed or retained in
23 the directory, cause each of its importers of any of its brand
24 families to be sold in New Mexico to appoint, and continually
25 engage without interruption, the services of an agent in the

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1 state in accordance with the provisions of this section. All
2 obligations of a nonparticipating manufacturer imposed by this
3 section with respect to appointment of its agent shall also
4 apply to the importers with respect to appointment of their
5 agents.

6 [B.] C. A nonparticipating manufacturer shall
7 provide written notice to the attorney general thirty calendar
8 days prior to the termination of the authority of an agent
9 appointed pursuant to ~~[Subsection]~~ Subsections A and B of this
10 section. No less than five calendar days prior to the
11 termination of an existing agent appointment, a
12 nonparticipating manufacturer shall provide to the attorney
13 general the name, address and telephone number of its newly
14 appointed agent for service of process and shall provide any
15 other information relating to the new appointment as may be
16 requested by the attorney general. In the event an agent
17 terminates an agency appointment, the nonparticipating
18 manufacturer shall notify the attorney general of the
19 termination within five calendar days and shall include proof
20 to the satisfaction of the attorney general of the appointment
21 of a new agent.

22 [C.] D. A nonparticipating manufacturer whose
23 products are sold in this state without appointing or
24 designating an agent as required by this section shall be
25 deemed to have appointed the secretary of state as agent and

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1 may be proceeded against in the courts of this state by service
2 of process upon the secretary of state; provided that the
3 appointment of the secretary of state as agent shall not
4 satisfy any other requirement of the Tobacco Escrow Fund Act."

5 Section 7. A new section of the Tobacco Escrow Fund Act,
6 Section 6-4-20.1 NMSA 1978, is enacted to read:

7 "6-4-20.1. [NEW MATERIAL] JOINT AND SEVERAL LIABILITY.--
8 For each nonparticipating manufacturer located outside the
9 United States, each importer into the United States of the
10 nonparticipating manufacturer's brand families that are sold in
11 New Mexico shall bear joint and several liability with the
12 nonparticipating manufacturer for deposit of all escrow amounts
13 due under Section 6-4-13 NMSA 1978, payment of all penalties
14 imposed in accordance with Section 6-4-13 NMSA 1978 and payment
15 of all costs and attorney fees imposed in accordance with the
16 Tobacco Escrow Fund Act."

17 Section 8. Section 6-4-22 NMSA 1978 (being Laws 2003,
18 Chapter 114, Section 9) is amended to read:

19 "6-4-22. PENALTIES AND OTHER REMEDIES.--

20 A. It is unlawful for a person to:

21 (1) affix a tax stamp or otherwise pay the tax
22 due on a package or other container of cigarettes of a tobacco
23 product manufacturer or a brand family that is not included in
24 the directory; or

25 (2) sell, offer for sale or possess for sale

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1 cigarettes of a tobacco product manufacturer or a brand family
2 that is not included in the directory.

3 B. The secretary may revoke or suspend the
4 registration or license of a person licensed or registered
5 pursuant to Section [~~7-12-9~~] 7-12-9.1 or 7-12A-7 NMSA 1978 that
6 violates Subsection A of this section.

7 C. Each stamp affixed, payment of tobacco tax,
8 offer to sell, possession for sale or sale of cigarettes in
9 violation of Subsection A of this section constitutes a
10 separate violation. For each violation, the secretary may
11 impose a civil penalty in an amount not to exceed the greater
12 of five thousand dollars (\$5,000) or five hundred percent of
13 the retail value of the cigarettes sold, offered for sale or
14 possessed for sale.

15 D. Cigarettes that have been sold, offered for sale
16 or possessed for sale in this state in violation of Subsection
17 A of this section are contraband, are subject to seizure and
18 forfeiture and shall be destroyed.

19 E. It is unlawful for a person to sell, distribute,
20 acquire, hold, own, possess, transport, import or cause to be
21 imported cigarettes that the person knows or should know are
22 intended for distribution or sale in violation of Subsection A
23 of this section. A person who violates this subsection is
24 guilty of a misdemeanor and shall be sentenced in accordance
25 with Section 31-19-1 NMSA 1978.

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1 F. A tobacco product manufacturer, stamping agent
2 or importer of cigarettes, or any officer, employee or agent of
3 any such entity, who knowingly makes any materially false
4 statement in any record required by the Tobacco Escrow Fund Act
5 or Section 6-4-13 NMSA 1978 to be filed with the attorney
6 general is guilty of a fourth degree felony and upon conviction
7 shall be sentenced pursuant to the provisions of Section
8 31-15-18 NMSA 1978. Each document filed containing one or more
9 false statements constitutes a separate offense.

10 G. A violation of this section constitutes an
11 unfair and deceptive trade practice pursuant to the Unfair
12 Practices Act.

13 ~~[F.]~~ H. The attorney general or the department may
14 seek an injunction to compel compliance with or to restrain a
15 threatened or actual violation of Subsection A of this section.
16 In any action brought pursuant to this subsection, the state
17 shall be entitled to recover the costs of investigation, costs
18 of the action and reasonable attorney fees, if the state
19 prevails.

20 I. The attorney general may issue a civil
21 investigative demand based on reasonable belief that any person
22 may be in possession, custody or control of an original or copy
23 of any book, record, report, memorandum, paper, communication,
24 tabulation, map, chart, photograph, mechanical transcription or
25 other document or recording relevant to the subject matter of

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1 an investigation of a probable violation of the Tobacco Escrow
2 Fund Act. The attorney general may, prior to the institution
3 of a civil proceeding, execute in writing and cause to be
4 served upon the person a civil investigative demand requiring
5 the person to produce documentary material and permit the
6 inspection and copying of the material. The demand of the
7 attorney general shall not be a matter of public record and
8 shall not be published except by order of the court."

9 Section 9. A new Section 6-4-24.1 NMSA 1978 is enacted to
10 read:

11 "6-4-24.1. [NEW MATERIAL] ATTORNEY GENERAL AUTHORITY--
12 AUDIT AND INVESTIGATION.--The attorney general or the attorney
13 general's authorized representative may:

14 A. conduct audits and investigations of:

15 (1) a nonparticipating tobacco product
16 manufacturer and its importers;

17 (2) a tobacco product manufacturer as defined
18 in Section 6-4-12 NMSA 1978 that became a participating
19 manufacturer after the master settlement agreement execution
20 date, as defined at section II(aa) of the master settlement
21 agreement, and its importers;

22 (3) exclusive distributors, retail dealers,
23 stamping agents and wholesale dealers; and

24 (4) persons or entities engaged in delivery
25 sales; and

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1 B. upon reasonable belief that a violation of the
2 Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 has
3 occurred or is reasonably likely to occur, issue subpoenas,
4 compel the attendance of witnesses, administer oaths, certify
5 to official acts, take depositions within and without the state
6 as now provided by law and compel the production of pertinent
7 books, payrolls, accounts, papers, records, documents and
8 testimony relevant to an investigation. If a person refuses,
9 without good cause, to be examined or to answer a legal and
10 pertinent question or to produce a document or other evidence
11 when ordered to do so by the attorney general or the attorney
12 general's authorized representative, the attorney general or
13 the attorney general's authorized representative may apply to
14 the judge of the district court of the jurisdiction where the
15 person is in attendance or located, upon affidavit, for an
16 order returnable in no less than two nor more than five days
17 directing the person to show cause why the person should not be
18 examined, answer a legal or pertinent question or produce a
19 document, record or other evidence. Upon a hearing for an
20 order to show cause, if the court determines that the person,
21 without good cause, has refused to be examined or to answer
22 legal or pertinent questions or to produce a document, record
23 or other evidence, the court may order compliance with the
24 subpoena and assess all costs and reasonable attorney fees
25 against the person. If the motion for an order is granted and

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1 the person thereafter fails to comply with the order, the court
2 may make such orders as are provided for in the rules of the
3 supreme court of New Mexico. Subpoenas shall be served and
4 witness fees and mileage paid as allowed in civil cases in the
5 circuit courts of the state."

6 Section 10. A new Section 6-4-24.2 NMSA 1978 is enacted
7 to read:

8 "6-4-24.2. [NEW MATERIAL] PRESUMPTION.--In any action
9 under Section 6-4-13 NMSA 1978, reports of numbers of
10 cigarettes stamped submitted pursuant to Subsection A of
11 Section 6-4-21 NMSA 1978 shall be admissible evidence and shall
12 be presumed to state accurately the number of cigarettes
13 stamped during the time period by the stamping agent that
14 submitted the report, absent a contrary showing by the
15 nonparticipating manufacturer or importer. Nothing in this
16 section shall be construed as limiting or otherwise affecting
17 the state's right to maintain that such reports are incorrect
18 or do not accurately reflect a nonparticipating manufacturer's
19 sales in the state during the time period in question, and the
20 presumption shall not apply in the event that the state does so
21 maintain."

22 Section 11. Section 57-2A-4 NMSA 1978 (being Laws 2000,
23 Chapter 77, Section 4) is amended to read:

24 "57-2A-4. DOCUMENTATION.--

25 A. On the first business day of each month, each
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1 person licensed or registered to affix a state tax stamp to
2 cigarettes pursuant to Section [~~7-12-9~~] 7-12-9.1 NMSA 1978
3 shall file with the department for all cigarettes imported into
4 the United States to which the person has affixed a tax stamp
5 in the preceding month:

6 [~~A.~~] (1) copies of:

7 [~~(1)~~] (a) the permit issued pursuant to
8 26 USCA 5713 to the person importing the cigarettes into the
9 United States allowing the person to import the cigarettes; and

10 [~~(2)~~] (b) the customs form containing,
11 with respect to the cigarettes, the internal revenue tax
12 information required by the federal bureau of alcohol, tobacco,
13 firearms and explosives;

14 [~~B.~~] (2) a statement signed under penalty of
15 perjury by the person affixing the state tax stamp identifying
16 the brand and brand styles of all the cigarettes, the quantity
17 of each brand style, the supplier of the cigarettes and the
18 person to whom the cigarettes were conveyed for resale and a
19 separate statement by that person under penalty of perjury,
20 which is not confidential or exempt from public disclosure,
21 identifying only the brands and the brand styles of the
22 cigarettes; and

23 [~~C.~~] (3) a statement signed under penalty of
24 perjury by an officer of the manufacturer or importer of the
25 cigarettes certifying that the manufacturer or importer has

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1 complied with the package health warning and ingredient
2 reporting requirements of 15 USCA Sections 1333 and 1335a with
3 respect to the cigarettes, including a statement indicating
4 whether the manufacturer is or is not a participating
5 manufacturer within the meaning of that federal law.

6 B. Prior to making a delivery sale or mailing,
7 shipping or otherwise delivering cigarettes in connection with
8 a delivery sale, each person shall file with the department and
9 with the attorney general a statement setting forth the
10 person's name, trade name and the address of the person's
11 principal place of business and any other place of business.

12 C. Not later than the tenth day of each month, each
13 person who has made a delivery sale or mailed, shipped or
14 otherwise delivered cigarettes in connection with a delivery
15 sale during the previous calendar month shall file with the
16 department and with the attorney general a report in the format
17 prescribed by the attorney general, which may include an
18 electronic format, that provides for each delivery sale:

19 (1) the name and address of the consumer to
20 whom the delivery sale was made;

21 (2) the brand or brands of cigarettes that
22 were sold in the delivery sale; and

23 (3) the quantity of cigarettes that were sold
24 in the delivery sale.

25 D. Any person who satisfies the requirements of

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1 Section 376 of Title 15 of the United States Code shall be
2 deemed to satisfy the requirements of this section.

3 E. For purposes of any penalty that may be imposed
4 for a violation of Subsection B or C of this section, a failure
5 to file a particular statement or report with both the
6 department and the attorney general shall constitute a single
7 violation."

8 Section 12. Section 57-2A-10 NMSA 1978 (being Laws 2000,
9 Chapter 77, Section 10) is amended to read:

10 "57-2A-10. GENERAL PROVISIONS.--

11 A. The Cigarette Enforcement Act shall be enforced
12 by the department and the attorney general; provided that, at
13 the request of the department, the state police and all local
14 police authorities shall enforce the provisions of the
15 Cigarette Enforcement Act.

16 B. For the purpose of enforcing the Cigarette
17 Enforcement Act, the department or the attorney general may
18 request information from any state or local agency, and may
19 share information with, and request information from, any
20 federal agency and any agency of any other state or any local
21 agency thereof.

22 C. In addition to any other remedy provided by law,
23 including enforcement as provided in Subsection A of this
24 section, any person may bring an action for appropriate
25 injunctive or other equitable relief for a violation of the

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1 Cigarette Enforcement Act; actual damages, if any, sustained by
2 reason of the violation; and, as determined by the court,
3 interest on the damages from the date of the complaint, taxable
4 costs and reasonable ~~[attorney's]~~ attorney fees. If the trier
5 of fact finds that the violation is flagrant, it may increase
6 recovery to an amount not in excess of three times the actual
7 damages sustained by reason of the violation."

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